

FRANK H. CROSBY

IBLA 76-407

Decided June 14, 1976

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 47715.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petitioner fails to show that the late payment was justifiable or not due to a lack of reasonable diligence. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence.

2. Federal Employees and Officers: Generally--Federal Employees and Officers: Authority to Bind Government

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to save an oil and gas lessee from the possible consequences of his own negligence.

APPEARANCES: Frank H. Crosby, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Frank H. Crosby appeals from the December 11, 1975, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of his oil and gas lease W 47715. The lease had terminated by operation of law for his failure to pay

the annual rental on or before the anniversary date of the lease, November 1, 1975. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). Appellant's payment, postmarked November 14, 1975, was received by BLM on November 17, 1975.

Appellant filed a petition for reinstatement pursuant to the pertinent statutory and regulatory provisions, 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c), respectively, which provide for reinstatement of leases terminated for failure to pay annual rental on time upon a showing that "such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee."

In his petition, appellant stated, in effect, that he also had a notice of rental due on a New Mexico lease on the same date and that he had inadvertently combined the rental payments into one check and sent it along with the two notices to Santa Fe, New Mexico, and that upon receipt of notice of his error from the New Mexico office, he immediately sent a new check on November 14, 1975, to BLM with the notice of payment due.

In denying the petition, BLM held that neither the late posting of the rental check nor the fact that the rental was erroneously mailed to the New Mexico State Office constitutes reasonable diligence as defined in Louis Samuel, 8 IBLA 268 (1972). <sup>1/</sup>

Appellant argues in his appeal that the receipt of the payment a few days late because it was unintentionally sent to the wrong office originally is not a just cause for denying reinstatement; that the appropriate check was mailed to BLM only a few short days after he was made aware of the mix-up, and it was not his fault that he did not receive notification of the mix-up until a few days into November; and that, in his opinion, the New Mexico office did not notify him quickly enough of the accidental mix-up, otherwise he would have been able to mail the payment in a reasonable amount of time.

At the outset, we point out that appellant has misconceived the effect of the statutory law. In John J. Nordhoff, 24 IBLA 73, 75 (1976), we stated:

When payment of the annual rental is not received on or before the anniversary date, the lease is not

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<sup>1/</sup> Samuel brought suit for judicial review of this decision. The Court granted summary judgment to the United States because Samuel had not initiated his action for judicial review within the 90-day period provided by 30 U.S.C. § 226-2; Samuel v. Morton, Civ. No. CV-74-1112-EC (C.D. Cal., Aug. 28, 1974).

terminated by the act, deed or decision of any federal employee. No discretion is involved. Rather, the lease terminates automatically, by operation of law, as required by the Act of July 29, 1954; 30 U.S.C. § 188 (1970), and the fact that such termination has occurred is merely noted by the Bureau officer and communicated to the lessee, as was done in this instance. John L. Stambaugh, 11 IBLA 27 (1973). A lease so terminated may be reinstated only if the terms and conditions of the statute and the pertinent regulations have been satisfied. The Secretary has no authority to waive such prerequisites. C. J. Iverson, 21 IBLA 312, 82 I.D. 386 (1975).

[1] Appellant has failed to show that the late payment of the rental was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). Reasonable diligence requires that the payment be sent sufficiently in advance of the due date to account for normal delays in handling and delivery of the mails. Hiko Bell Mining & Oil Company, Inc., 24 IBLA 255 (1976); Earl Chancellor, 24 IBLA 121 (1976); Louis Samuel, *supra*. Posting a rental payment 10 days after its due date does not demonstrate reasonable diligence. 2/ See John E. Stengel, 24 IBLA 98 (1976), wherein the Board held that reasonable diligence is not shown when the payment is postmarked 1 day before the due date.

However, the substance of Dr. Crosby's appeal is more of a plea that the late payment was justifiable because of his inadvertence in mailing the payment to the New Mexico State Office and the failure of that office to notify him promptly of his error so that he could have mailed his payment in reasonable time. 3/ The

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2/ The payment was actually posted on November 14 but as November 1, 1975, fell on Saturday, payment was not due until Monday November 3, the first official working day thereafter. 43 CFR 3108.2-1(a).

3/ Although it is immaterial to our holding herein, the case file contains some evidence which would tend to indicate that the New Mexico State Office may have notified appellant as promptly as possible of his error. This is a machine copy of a notice from that office, dated November 3, 1975, addressed to appellant at his address in Lockport, New York, informing him of his mistake, and at the bottom of which is the following unsigned handwritten note: "Sorry, as you can see the rental money was sent to New Mexico 10/31/75." If the payment was mailed from Lockport, New York on October 31, the earliest it could have been received in the New Mexico State Office in Santa Fe would have been November 3. See n. 1.

word "justifiable" as used in the statute generally envisages factors beyond appellant's control which were the proximate cause of the failure to pay timely. Earl Chancellor, supra; R. G. Price, 8 IBLA 290 (1972). Cases of simple inadvertence are not generally considered justifiable or diligent. Hiko Bell Mining & Oil Company, Inc., supra; Louis Samuel, supra. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence. Hiko Bell Mining & Oil Company, Inc., supra. See also the discussion in Margaret C. Hose, 24 IBLA 255, 309-10 (1975).

[2] Appellant's statement that he could have mailed the payment in time if the New Mexico State Office had notified him promptly of his error implies that employees of that office had an affirmative duty to take extraordinary measures to inform him. Bureau personnel have no affirmative duty to take such measures to save a lessee from the possible consequences of his own negligence. The government is not estopped by the failure of Bureau personnel to take extraordinary actions. Any action taken, or any omission to act promptly, on the part of Bureau personnel, cannot vitiate the statutory mandates of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181 et seq.; Richard V. Bowman, 19 IBLA 261, 265-66 (1975); Duncan Miller, 12 IBLA 201, 204 (1973). Even if we were to assume, arguendo, that the Bureau did not act correctly, the Board has held that, normally, there can be no estoppel against the government based on the incorrect or unauthorized acts of its employees. Richard V. Bowman, supra (at 266); Atlantic Richfield Company, 16 IBLA 329, 81 I.D. 457, 462 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis

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Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Frederick Fishman  
Administrative Judge

